

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

BILLY GENE CLAYBURN	)	
	)	
Petitioner,	)	
vs.	)	NO. CIV-06-0262-HE
	)	
SAM CALBONE, Warden,	)	
	)	
Respondent.	)	

**ORDER**

Petitioner Billy Gene Clayburn, a state prisoner appearing *pro se*, instituted this action seeking habeas relief and,<sup>1</sup> consistent with 28 U.S.C. §636(b)(1)(B), the matter was referred to Magistrate Judge Bana Roberts. Concluding the petitioner failed to articulate the violation of a federal constitutional right, the magistrate judge recommended that the petition be denied.<sup>2</sup>

The petitioner failed to object to the Report and Recommendation and thus waived his right to appellate review of the factual and legal issues it addressed. United States v. One Parcel of Real Property, 73 F.3d 1057, 1059-60 (10th Cir. 1996); *see* 28 U.S.C. §636(b)(1)(C); LCvR72.1. Accordingly, the court adopts Magistrate Roberts' Report and Recommendation and **denies** the habeas petition.


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<sup>1</sup>*Because the petitioner is challenging the execution of his sentences, the magistrate judge construed the petition as having been filed under 28 U.S.C. § 2241, rather than § 2254.*

<sup>2</sup>*The magistrate judge agreed with the respondent that the petitioner essentially was challenging the Department of Correction's interpretation of state law.*

**IT IS SO ORDERED.**

Dated this 25th day of November, 2008.



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JOE HEATON  
UNITED STATES DISTRICT JUDGE